VIII

THE Influence of the Proprietors IN FOUNDING THE State of New Jersey

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VIII

THE Influence of the Proprietors IN FOUNDING THE State of New Jersey

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The Influence of the Proprietors in Founding the State of New Jersey.[1]

"We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution."

These words are the ordaining clause of the present constitution of New Jersey, which was adopted in 1844. They are not the introduction to the terms of an agreement; they begin no compact. They are a creative fiat; they call into being a law of laws for the commonwealth; they institute a government. But the people who thus ordain, who exercise this highest original faculty, are not themselves the product of a single creative act. The self-government here in full activity, the only real counterpart of the people, was a growth, to whose perfecting many agencies contributed.

The nature of an act done by an absolute monarch and that of the ordaining act of a self-ruling community, are nowhere more clearly contrasted than in the feelings of interest with which we regard the two. The former excites no curiosity as to the origin of its producing power. It has the same source as the commands of a wilful child, and is as single in motive; whereas the sovereign act of a people leads us to inquire by

[1] Read at Perth Amboy, November 25, 1884, the two hundredth anniversary of the establishment of the American Board of Proprietors of East Jersey.

what process the many individual wills have been wrought into the one will, which, with a mature consciousness, imposes laws upon itself. The enduring constitution of a free people, always implies a historical growth in that people.

The political life of the people of East New Jersey embraces five periods of varying length. The first, excluding the discovery and the taking possession of the territory, begins with the grants of 1664, respectively from the King to the Duke of York and from him to Berkeley and Carteret, and ends in 1682, the date of the transfer of soil and rights of government to the twenty-four Proprietors—a period of eighteen years. The second period was twenty years long, to 1702, the date of the surrender of powers of government to the Crown. The third period was that of the royal government from 1703 to 1776. The fourth from 1776 to the adoption of the Constitution of the United States in 1788. The last, the national period of ninety-six years.

Which one of these was the period distinctively formative of the political character of the people of New Jersey? The answer to this question does not lie upon the surface of the events of these divisions of the past, for strongly marked as are the lines which separate these periods, there is but one growth, in which they are all necessary factors; so complete is the unity of continuous life, that the history of one involves the consideration of all. Our investigation brings us face to face with this fact, that all these separate stages are vitally essential to the complete development, therefore in one sense equally essential, yet we are cheered in our further search by the reflection that there must have been a time whose peculiar relations to its past and future were more fully determinative of political character than those of any other period. Is there not in the life of every people a time, when the motives and thoughts and all the lines of social life of the past come together, and then all lengthen on into our present, so that if we trace them back they seem to have radiated from that point and further back all radiate toward that point, so that

viewed as a whole, the influences and causes and effects of the remote and intervening past there intersect? This is true of the great world history. The ancient nations are all merged in the Roman Empire; out of Rome all modern nations have emerged. The period of Roman supremacy was the point of intersection where the lines of all human activity crossed. Something of the same sort is true of this State community, whose formative point is to be found in the time of the Proprietors; the active principle in this case, however, was not Force, the world-conqueror, but the quiet beginnings of home rule.

The grants of 1664, and the "concessions" from the Proprietors, Berkeley and Carteret, began the work of founding the separate community. The grants fixed the boundaries of the future State as a distinct part of the realm, owing allegiance and having a right of appeal to the English Crown. Do we value the separate existence of our State? Let us be grateful then for the timeliness of the grant. Had it not come at this time, in all probability it would never have come. The concessions, besides granting as it were by grace certain freedoms and immunities, particularly religious rights, establish a general representative Assembly. The legislative powers granted to this Assembly were adequate to all the needs of the community, comprising the power to appoint a time for the meeting of the Assembly and its adjournment, to enact all laws necessary for the government of the Province, provided they were agreeable to the English constitution and not against the interest of the Proprietors or the concessions. The Assembly had the further power to erect courts and determine their jurisdictions, the power of taxation, of dividing the Province for local purposes, war powers and the power of naturalization. But these powers were not to be exercised independently of the assent of those who represented the Proprietors—namely the governor and a council appointed by him. The governor and his council were thus constituted a co-ordinate branch of the Legislature and they received by

the concessions some important executive and legislative functions to be exercised independently; and as though implying that they might exercise powers not expressly delegated, they were prohibited from acting contrary to the laws of the Province, and a section taken from the Magna Charta and the Petition of Right forbade their imposing any tax without the consent of the General Assembly. The concessions thus formed a fundamental law adequate to the settlement and government of the Province. They gave a guarantee of some of the most important rights, and they left to the people a large control of their local concerns. They rendered a distinct service by beginning in New Jersey the process of differentiating English self-government. Back of all, was the King and the Parliament—the English constitution, but there was a wide field for special law-making, which the orders of the King and the Acts of Parliament did not enter. In this field the New Jersey General Assembly had somewhat of the dignity of Parliament. There was an implied recognition of a difference in the political life of the Province, in that but one of the vital parts of the English constitution as found in the Petition of Right was lodged in the concessions—the principle of taxation by the legislative power alone. It was further prophetic of a new era that Carteret, who had held the Island of Jersey against the Parliamentarians to the very last, should, with Berkeley, another Royalist, adopt this most important principle which the Revolution had gained as part of the primal law of the new Jersey.

This earliest constitution was in the nature of a compact with the individual settlers, and afterwards, as they came to be represented in the Assembly, with the people as a body. But something else was needed to constitute the people within the bounds of New Jersey a body politic, in whom original political power might be said to inhere. This something was not the mere Act declaring and establishing independence, but the generating and gradual growth of a spirit to which independence in the fulness of time should not be an un-

natural act but a part of the regular process of development. The beginnings of such a growth were not directly supplied by the concessions which came from without. The new life must have its source in the people themselves.

The first evidence of an original political life in the people was in their restlessness under the operation of the concessions. The representatives in the Assembly very early insist upon a joint session with the governor and council, where their power from their superior numbers must over-rule that of the governor and his council. By successfully resisting this effort the representatives of the Proprietors secured to New Jersey in the earliest Assemblies the manifold advantages of two houses in legislation.

The next display of the popular spirit was in the refusal to pay the quit-rents stipulated in the concessions. This opposition was in the strictest sense illegal; so far as the concessions were building up the Province, it was disorganizing—the so-called disorganizing Assemblies of 1671 and 1672 going so far as to seek a virtual overthrow of the properly constituted provincial authority, through the choice of James Carteret as president of the country. But the value of this illegal resistance in awakening and strengthening in the people the power to perfect an organic law was two-fold; first, the imposition of quit-rents, even though sanctioned by the fundamental law, had something of a feudal nature, and it called up that spirit which the feudal system of the middle ages universally awakened, the spirit of resistance, a personal resistance, a defiance on the part of the individual. The tendency, then, was to strengthen individualism, individual character on its good side as well as its bad we shall find if we follow this influence far enough. The devotion to public liberty of New Jersey, like that of Virginia, has ever been infused with a marked zeal for personal freedom. This spirit in the southern state may be attributed in part to the isolation in which the planter lived. In New Jersey the series of early events connected with the Elizabethtown grants, the harassing

influence of the demands for the quit-rents and like causes, contributed also to the formation of the same characteristic. But as individualism grew, the sense of the value of government was not, in the end, impaired, and individual responsibility for it was quickened. A second result of the differences between the government of the first Proprietors and the people was the development of the town as an essential factor in the Province. Almost from the first these political units of the State had, through the grant of large prudential powers from the governor and council, a vigorous life. As distinct and integral political organizations the towns, whether together in the Assembly or in their separate town meetings, were made the instruments of opposition to the representatives of the Proprietors.

The various immediate objects of opposition to the governor and council were not gained either by the individual man or by the towns, and this failure was not without influence in teaching them real self-government. They learned that it was not the caprice of the individual, nor the shifting opinion of all within the circle, whose centre was the one market place. True, the towns had, by grant from the Proprietors, their special privileges, but these could not form a body of law for the Province nor supercede its necessity. So men and the towns find their way back to the concessions. The deputies to the General Assembly are still in opposition to the governor and council in 1681, but now they insist that the concessions are to be taken according to the letter, without any interpretation whatsoever; that the constituting of courts by governor and council, and the explanation of the concessions made in 1672, by Berkely and Carteret, are a breach of the concessions, and the deputies declare the inhabitants of the Province not obliged to conform themselves thereunto.[1]

The Assembly for the first time in the history of the Province was then dissolved by the governor, an act which the

[1] N. J. Archives, I., pp. 355, 356, 359.

deputies unanimously protested was contrary to the concessions and an innovation of the government. The beginnings of the power and the spirit of complete self-government were here manifest. The people deliberately chose the concessions as the basis of their political life.

In 1683 the deputies attempt to "disown" the concessions, but now the governor and council are strict in their adherance to the "foundation of government."[1] Thus the concessions, alternately favored and opposed, are rooted more firmly, just as that tree is more firmly rooted, upon which the wind blows from various quarters.

A happier evidence of the beginnings of the higher political life of New Jersey as a distinct community was afforded in 1680. The spirited opposition of the deputies to the governor of New York, when he attempted to usurp authority over the Province of New Jersey, the manly resistance of Governor Carteret to the same usurper, and particularly his letter in which he denies a right of levying duties in the interest of the Duke of York, without the consent of the New Jersey Assembly, unite for the time being, all the forces, to render an enduring service in the making of the State. The service was the greater because of the simultaneous action of West Jersey for the same noble end.[2] This effort of the two Provinces, successful in vindicating their rights to freedom from taxation was a triumph for the agencies which would one day demand independence for the reunited halves of New Jersey and for the united colonies, while the influence of the victory for equal commerce lived in New Jersey until the adoption of the Constitution of the United States. The action of Carteret in defending the jurisdiction of New Jersey against the encroachment of Andros, aroused a hostility to the latter in England, which brought about his recall and helped to awaken the spirit which later in England defended the cause of America.

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[1] Record of Governor and Council, p. 80.
[2] Smith's History of New Jersey, p. 117.

In the first-period, then, this much had been done to form a new people. Under the concessions, the Province began to be settled; individualism as a necessary part of self-government gains greater significance; town government is begun and influences the growth of the embryo State, while the Province as a whole begins to be something more than a mere name; it is a part of the English realm, but a distinct part and not a dependency of New York.

When the rights of soil and of government were transferred to the twenty-four Proprietors in 1682, many of the conditions which are of universal value in the making of a State, were present. The time, the last quarter of the seventeenth century, was one of general political formation. The Thirty Years' War had run its disastrous course; William of Orange fought absolutism on the Continent, and the Revolution of 1688 began a new era in England; the Great Elector, after the battle of Fehrbellin, was laying the first foundations of Prussia. Only France was given over to absolutism, but by the revocation of the Edict of Nantes she gave in the Huguenots some of the best of formative elements to South Carolina. Massachusetts and the New England colonies began a new career, when the attempt at centralization by James II. failed and their charters were restored. In 1684, many of the colonies joined in a defensive league against the savages, the second of the minor prophecies of the great Union to come.

The young community shared in the influences of the general movement; and there were special conditions which favored her growth. A law of the General Assembly of 1676 speaks of the Province as being "in its minority."[1] Like a prince one day to be a sovereign, who attains his majority at the age of eighteen, so New Jersey after the first period of eighteen years, was ready to begin the work which should fit her for the higher duties and powers. Here was a

[1] Leaming and Spicer, pp. 120, 122.

people beginning to prosper, but hopeful rather than contented; of conflicting motives, but the motive to union always in the end prevailing; in close relations with nature, who imparted to them qualities which they could never lose but must transmit to their posterity. She gave them rich promises; "here is a brave country," writes Rudyard, the first Deputy Governor under the new Proprietors; "here is a gallant, plentiful country," writes Lawrie, his successor. Penn took a view of the land and said he had never seen such before in his life. "The people," said Rudyard, "are generally a sober professing people, wise in their generation, courteous in their behaviour, and respectful to us in office among them."[1] The people in accepting the early concessions, had "expectation," so they said in West Jersey, "of some *increase* of those freedoms and privileges, enjoyed in" England, and the expectation grew with the growth of the Province and with the change of the proprietaries. It was a tendency that could not be stayed until the people were, in their own phrase, "*owners of their liberty.*"[2] How was this tendency met by the twenty-four Proprietors? Whatever their theory was as to the necessity of a firmness of administration to gain their pecuniary rights, in other respects their conduct harmonized with the wishes of the people. In "a brief account of New Jersey, published in 1682, by the present Proprietors, for information of all inclined to settle in that country," they say that in the concessions, provision was made for liberty in religion and property in estates, and "we," they continue, "shall be ready and desirous to make such further additions and supplements to the said Constitution, as shall be thought fit for the encouragement of all planters and adventurers, and for the further settling the Colony with a sober and industrious people."[3] Whatever

[1] Smith, pp. 169, 170, 179.
[2] Ibid, pp. 120, 124.
[3] Smith, p. 542.

change, then, the Proprietors might make in the organic law could only be construed in the light of this promise, the spirit of which as well as the letter, bespoke the largest liberty for the emigrant. So too, the seal of the twenty-four Proprietors, as they undertook the duty of government, was in keeping with this natural character of the Province and of its people. Every official act of the twenty-four Proprietors received the stamp of this seal, on which were exquisitely engraved the emblems of plenty and of even-handed justice. Surrounding the emblems were these legends: "Righteousness exalteth a nation. Its God giveth increase." Thus every act of theirs testified to their recognition of a God-given increase of the fundamental law as well as of the fruits of the earth.

The letter in which the Proprietors announced to the people their purchase of the Province, breathes the same spirit. "We desire nothing more than to approve ourselves as you may find yourselves happy." "Your interest is now so bound up with ours that we cannot suffer if you prosper, nor prosper where you are injured." And they promise "everything that may be needful toward the good government and advantage of the Colony."[1]

The seal of the Proprietors was further indicative of the character of the new government. The seal of Berkeley and Carteret bore their coats of arms and thus suggested a personal government. The seal of the twenty-four was absolutely impersonal, so far as men were concerned; God alone was recognized as the author of the growth and exaltation of a nation. It was almost as though human direction were withdrawn, and abstract principles, free from the impress of the mind even of great men, were left to work their own work among the people. The Proprietors were rather the servants than masters controlling the principles of government which were becoming active in New Jersey. "It is

[1] Leaming and Spicer, p. 167.

not possible for you to understand," so writes Lawrie, the Deputy Governor, to the Proprietors, "what is for the good of the Province as I do that am here,"[1] and in response, the Proprietors adopt the act of the first of August, 1684, in which they acknowledge the necessity "*that there be full and ample power constituted in some persons in the Province, to do all things that may contribute to the good and advancement of the same.*" This instrument transfers immediate supervision of the Proprietors' interests and rights from England to commissioners in America.[2]

Another Act, giving ampler powers and more practicable conditions to the new American Board of Proprietors, and freer self-direction to the people, was adopted a few months later, *and two hundred years ago to-day.*[3] It is fitting that those who hold the power of the State in trust and representative citizens from all parts should commemorate these acts, for they were significant in the founding of the State. They were as important to the development of political power in eastern New Jersey, as "the vote," two generations before, by which in the transfer of the Massachusetts Company to America, "a commercial corporation became the germ of an independent commonwealth."[4] Under these Acts, the first full exercise within the borders of the State, of the proprietary power of revising legislation took place two hundred years ago the coming Thanksgiving day. "To all Christian people and others to whom these presents shall come," the American Board of Proprietors address their act confirming the laws of the past two years.[5] In the volume of seven hundred pages, containing these early laws and constitutions, it is the only Act so addressed. We may readily infer that

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[1] Smith, p. 178.
[2] Leaming and Spicer, p. 195.
[3] Leaming and Spicer, p. 198.
[4] Bancroft, Hist. of U. S., Cent. Ed. I. p. 275.
[5] Leaming and Spicer, p. 281.

the Deputy Governor and his fellow Proprietors who signed the Act, were conscious that it indicated a new adjustment of political forces. The Proprietors become as far as possible identified with the Province. The new Board share with the people in the making of the law, while with all citizens they are equally subject to the provincial law.[1] But we arrive at the full measure of the importance of this assimilation of proprietary and popular government when by the study of the events of the next half generation, we learn to know the principle of government, which the Board of Proprietors grew more and more to represent. It was neither of the three historic forms, monarchy, aristocracy or democracy. It stood for essentially the modern principle of the non-interference of government, the laissez faire, the hands-off theory, the least government the best. It gave the opportunity for the action of a self-determining power within the four bounds of New Jersey, by virtue of which, the inhabitants of that portion of the globe could as one body say with truth, a century and a half later, "all political power is *inherent* in the people."[2] It is true, the twenty-four Proprietors had prepared for the Province a new organic law—the so-called Fundamental Constitutions, which, though sanctioning in part, were designed to supercede the concessions, and they instructed their Deputy Governor to "order the new scheme of government to be passed in an Assembly."[3] But they tacitly acquiesced in its rejection. In a conference of the deputies with the governor and his council on the 19th of April, 1686, Governor Lawrie made inquiry "of what answer" they gave touching the scheme of government laid before them a few days previously. The deputies answer "*that they apprehended the same did not agree with the Consti-*

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[1] Scot's model in Whitehead's East Jersey under the Props., pp. 398, 447, 449.

[2] Constitution of 1844.

[3] Leaming and Spicer, p. 175.

tution of this Province, and that they understood that the same were nowise binding, except passed into a law by the General Assembly." The governor's council had already given it as their sense "*that the same did not agree with the Constitution of these American parts.*"[1]

The governor did not press the matter, nor did the Proprietors further insist on it, and in this simple way the great act was done, at once asserting and confirming the ordaining power. The people of East New Jersey had determined that by their own authority their organic law should be.

By refusing the Fundamental Constitutions and planting themselves on the concessions, the people secure all that had been gained in the first period, and the Proprietors, sharing in this essentially ordaining act of the people, the rights of self-government became indefeasible. It was only natural, then, that in an act passed thirteen years later, declarative of rights and privileges, many rights and privileges should be included, which had hitherto never found expression in the Province.[2] The people were creating the organic law. It was a solemn act. "*The whole House of Representatives,*" so runs the record of the governor and council, "*came before this Board and gave in the Bill of Rights . . . passed their House, which was read here and passed this Board.*[3] This act, including many of the provisions of the concessions, has also many features in common with the government which the people ordained in 1776.

With this act, which bears the date of the 13th of March, 1699, together with that of the 19th of April, 1686, the work of the Proprietors in helping to lay the legal foundation of the State was complete. It was an anomalous government. An idea grew up after the revolution of 1688

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[1] Record of Governor and Council, pp. 125, 126, 128, 131.
[2] Leaming and Spicer, p. 368.
[3] Record of Governor and Council, p. 219.

that it was no rightful government. King William contested its title, and the people of East New Jersey petitioned the Crown against the Proprietors, and factions sprang up among themselves. Of the original Proprietors, but *four* were left in 1702 to surrender what they admitted in the instrument of surrender was a pretended right to government, but the fact remains, that better than they, or those about them, knew, they built for all time.

Three-quarters of a century must pass before independence was declared, but the people of New Jersey were already capable of an independent political life. In fact, from 1689 to 1692 there was no general government. The local administration of law secured the peace and welfare of the whole Province. In the contest with the royal governor, Lord Cornbury, in 1707, the representatives of the people reject with abhorrence the charge of the Council that they purpose throwing off their allegiance and revolting from the Crown of England. So they abhorred the thought, even after the War for Independence was begun, but they were no less capable of independence had it come two generations earlier. We may note that in this same reply to the complaint of the Lieutenant-Governor and the Council to the Queen, the people do not disclaim the right to judge, as was charged, whether royal orders conformed to law.[1] The right of self-rule, which they had gained in the time of the Proprietors and under the influences of their government, they kept until all the Colonies were equally ready to assert with them that this right should be national in America.

But we find evidences elsewhere than in the growth of the fundamental law, that under the influence of the Proprietors the State, as we know it, was gradually forming.

No stronger influence moulds the life of the people of a State than that which comes from its minor political divisions. The town and the county have shaped the life of the States of the Union. In this respect there are three classes

[1] Smith, pp. 347, 386.

of States; those in which the town is the political unit—the six States of New England; the second, those in which the county is the unit—the States of the South; the third, those of the "compromise system," as it has been called—a mixed organization of county and township prevailing in the Middle States and the West.

Town government sprang into a vigorous, self-directing life at the time of the first Proprietors,[1] and county government had its feeble beginnings;[2] but it was only in the time of the second proprietary government that the two organizations grew into a composite whole.

The temptation is great to dwell upon the history of this phase of State development from this time on; to show how the functions of the two local divisions were adjusted; to point out the unconscious beginnings of the forms and harmonies which exist to-day, but the present purpose of our study will not admit of a statement of its every result. Only in general, it may be said, that to this period is due the founding of that system which, more than any other influence, gives individuality of character to the self-government of the State.[3]

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[1] During this period local government was exercised by virtue of charter rights in seven towns, namely: Bergen, Elizabeth, Newark, Middletown, Piscataway, Shrewsbury and Woodbridge.

[2] By a law of the General Assembly of the 13th of November, 1675, the towns were grouped into counties with no very definite limits, and with the sole purpose of erecting courts. Leaming and Spicer, p. 96.

[3] A view of the methods of *taxation*, as found in the tax laws of the Proprietary period, will, perhaps, best show the germination and gradual growth of local government in New Jersey.

CONCESSIONS.

1664.—By the Concessions the General Assembly has power to lay taxes upon lands or persons within whatever *local divisions* it may erect within the Province. (Leaming and Spicer, p. 16.)

LAWS OF GENERAL ASSEMBLY.

May, 1668.—First tax, thirty pounds—five pounds to each *town*—in country pay to be delivered by inhabitants to Jacob Mollins, of Elizabethtown. (L. and S., p. 81.)

The constituting of courts is another important formative element. An authority not lightly to be questioned says that Lord Cornbury "is entitled to the credit of having laid the foundation of our whole judicial system."[1] But the beginnings of it seem to date from the legislation of this period. Here we have the Common Law Courts in town[2] and county,[3] a Supreme Court for the Province,[4] distinctions between law and equity jurisdiction;[5] provisions for appeals on account of errors or other grounds,[6] for regular prosecutions and issuing of processes[7]—in short, a systematization of the administration of justice.

November, 1675.—*Towns* and *plantations* grouped into *counties* for the sole purpose of erecting courts. These counties have no very definite bounds, and they receive no names. (L. and S., p. 96.)

December, 1675.—*Provincial Treasurer* appointed, to whom *town constables* are to bring in the rate. (L. and S., pp. 103, 104.)

December, 1675.—Assembly proposes to raise fifty pounds, Governor's arrears, by *subscription* to be paid to constables of *towns*. (L. and S., p. 104.)

April, 1676.—*Three select men* to be chosen by the freeholders of every *town* to assess Governor's arrears not subscribed. (L. and S., p. 117.)

October, 1676.—Constables of every *town* to receive and compel payment of rates levied by the General Assembly. (L. and S., p. 121.)

1678.—Country rates levied upon land. Governor's salary paid by poll taxes. (L. and S., pp. 129, 130, 125.)

[1] Field's Provincial Courts, Coll. of N. J. Hist. Soc., Vol. III.

[2] An elective Court in every town having cognizance of cases to the value of forty shillings, a Justice of the Peace to be one of the Court. Leaming and Spicer, pp. 99, 100, 229.

[3] In every county, Courts of Sessions or County Courts, whose sessions were at first annual and afterwards biennial and quarterly. Leaming and Spicer, pp. 96, 230, 268, 347.

[4] A Court of Common Right with original and appellate jurisdiction, to have cognizance "of capital, criminal, or civil causes of equity to be the Supreme Court of the Province," with quarterly sessions. Leaming and Spicer, p. 232. In W. J., 1693, a Supreme Court of Appeals, Leaming and Spicer, p. 517, and a Court of Oyer and Terminer, Leaming and Spicer, p. 520.

[5] Leaming and Spicer, pp. 232, 348.

[6] Leaming and Spicer, p. 232.

[7] Leaming and Spicer, p. 253.

Other influences came from the people of that day to determine what the people of this day should be. The very homeliness of much of the legislation of those twenty years shows that self-rule was thrusting out its roots into the best of soil, and yet on the other hand, the General Assembly of this feeble Province could rise to the dignity of enacting in a separate law, the thirty-ninth and fortieth chapters of the great Charter, "the essential clauses," as Hallam calls them.[1]

In the formation of this body of law, there were many conflicts; there was turbulence at times in the Province, but the greatest of living historians has said, that "all progress

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March, 1682.—"For the better governing and settling courts," in the Province, the General Assembly divides it into four *counties*, which receive names and definite bounds. (L. and S., 229.)

1682.—Justices of *County Court of Quarter Sessions* impowered to assess tax for building a jail in each *county* and a pound in every *town*, and to appoint collectors and receivers of this tax. (L. and S., p. 268. Compare Allinson's Laws, p. 14.)

December, 1682.—Tax of fifty pounds apportioned among the *counties*, to be assessed in each *county* by six men appointed by the Assembly, upon improved lands and stocks. *Town constables* to act as *collectors*, and to pay the sums collected to the *Treasurer of the Province*. (L. and S., p. 274.)

In 1684 the West Jersey Assembly impowers each *tenth* to lay and levy road taxes, and to choose six assessors and two collectors of a general tax. (L. and S., p. 494.)

April 19, 1686.—Four or five assessors to be chosen by the people of each *town* to levy rates for highways laid out by *County* Commissioners, (named by the General Assembly, L. and S., p. 256), and taxes for all other public charges within the respective limits of the *towns;* the rates and taxes so made to be presented to the *Court of Quarter Sessions* in the respective *counties*. The Justices of the Court to approve, amend and confirm them with the consent of the majority of the assessors. (L. and S., p. 294.)

The above act, in a large sense the beginning of combined *town* and *county* action in the matter of *taxation*, was passed on April 19, 1686, the same day on which the Deputies refused the Fundamental Constitutions.

The birth of the mixed town and county system, the special form of New Jersey local rule, was thus coincident with the birth of self government in the Province as a whole. (Record of Governor and Council of East Jersey, 1682–1703, pp. 131, 132.)

[1] Leaming and Spicer, p. 240.

comes through conflict." It is not true, indeed, that peace has her victories, *because* war has had hers. A recent address [1] before the New York Chamber of Commerce is most suggestive in this regard in respect to our national wars. Does not the same hold true in the smaller sphere?

On the freedom of religion, the concessions allowed no restriction, not even by "any law or statute or clause contained, or to be contained, usage or custom of the realm of England," but the people in their Law of Rights in 1699, follow the leading of the English Bill of Rights of 1689, and decree intolerance of the Roman Catholic religion. In the Constitution of 1776, too, civil rights are guaranteed to

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This Act was modified nine years later, 1695, but only to facilitate its operation. It was, therefore, thereby virtually confirmed. (L. and S., p. 355; Compare *inter al* Allinson's Laws, pp. 14, 35, 60, 115; Revised Statutes, Sec. 12, p. 129.)

May, 1688.—To withstand invasion of the French, specific tax on land, cattle, horses, swine, and poll tax on male persons of sixteen, to be levied and collected by *County* Commissioners appointed by the Assembly. Constables of each *town* to receive estimates of taxable property and deliver them to their respective *County* Commissioners. Taxes to be paid by the inhabitants to the respective *County Treasurers* appointed by this Act for the first time by the General Assembly. (L. and S., p. 306.)

1692.—Method of levying and collecting tax similar to that of 1688. (L. and S., 321.)

In this year the West Jersey Assembly empower each *county* court to appoint County Collectors of a poll tax. (L. and S., p. 510.)

1693.—The county growing in importance. Each *town* in the county was empowered to choose one or more men to join with the justices of the county court, annually, to adjust the debts of the *county* and assess taxes for their payment. (L. and S., p. 333.)

1693.—King's tax for defence against the French. Twenty men to be raised proportionately from the five *counties*. To maintain these soldiers a tax of four hundred and thirty pounds in specifics to be raised. This Act appoints one Commissioner for each *town*, who receives from the town constable estimates of all ratables in the town. These Commissioners meet in a body at Perth Amboy and equalize the assessment. The taxes collected by *County* Receivers appointed by this Act. (L. and S., p. 334.)

[1] That of Mr. Evarts, at the one hundred and sixteenth anniversary dinner of the New York Chamber of Commerce.

Protestants alone. Only in the Constitution of 1844 has New Jersey turned to the times of the Proprietors and brought back again the fearless spirit of complete religious liberty.

For education, the earliest town charters granted by the Proprietors, provided; in Woodbridge, one hundred acres were to be laid out for the maintenance of a free school,[1] and school lands were to be exempt from quit-rents. The towns established schools, and laws of 1693 and 1695 provided for rates and the regulation of schools by selectmen.[2]

We must not leave out of sight the influence of the Proprietors in gathering this provincial population from many

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October, 1694.—Act for the appointment of *County Treasurers*. The justices of each *county court* to appoint at their discretion a County Treasurer to disburse county funds in paying for the destruction of wolves, providing for the poor and orphans and defraying the county debts. (L. and S., p. 350.)

1695.—One hundred and fifty pounds in silver, proportioned among the *towns* of the Province and the counties of Monmouth and Somerset, to be levied upon all estates real and personal, as each *town* and the two counties named shall adjust the rates. General Assembly appoints the collectors, vacancies among whom are to be filled by the *town*, or in the case of Monmouth and Somerset by the county. (L. and S., p. 353.)

1698.—An Act for making town rates to defray town charges. Each *town* chooses three men to assess for (1) representatives' wages, (2) charges about highways, (3) rates for the poor, (4) constables' wages, (5) killing wolves, (6) repairing burying places, (7) schools, (8) pounds, (9) clerks' wages. This assessment to be presented to any justice of the peace of the *county*, who may approve or amend the same with the consent of two of the three persons chosen as above. (L. and S., p. 372.)

1698.—General tax of six hundred and seventy-five pounds. The Act introduces a system of taxation on real estate by polls and specifics nearly identical with that later adopted by the State Legislature. (Compare Gordon's Gazetteer, pp. 57, 58; also Laws of West Jersey, 1684, 1685, 1693, 1696, 1697, 1700; L. and S., pp. 494, 505, 521-2, 549, 561, 574.)

By this Act an assessor or commissioner was named by the Assembly for each *town*. These assessors to meet in the capital of the Province to equalize assessments. They also serve as collectors and receivers. (L. and S., p. 376.)

[1] Whitehead's East Jersey under the Proprietors, p. 287.

[2] Learning and Spicer, pp. 328, 358.

parts—from New and Old England, from Scotland, from Ireland, to join them to the Dutch already here to make the one people.

The latest writer on American Colonial History says that the colonists of New Jersey had a strong respect for vested rights.[1] May we not attribute the feeling to the experience, which grew out of the early and safe system of the proprietary grants, and, on the other hand, of the disputes, in some parts, which enforced the necessity of secure titles?

The contest the people had to establish their fundamental law, taught them the value of a written constitution and the absolute need that law should conform thereto. Though it grew up in part by legislative enactment and though the constitution of 1776 carries the implication of possible legislative amendment, yet in a spirit, born as we may believe in those early days, and certainly expressed in the earliest constitution of West Jersey, Chief-Justice Brearly in 1780, gave a decision of prime historical importance. Other States than New Jersey have been called the formative centres of the various influences which have combined to bring about the one great result—this mighty union; but New Jersey has at times shown the way. This decision of her Supreme Court was the first of the series which established the principle and at last made it a part of the Constitution of the United States, that an unconstitutional law is no law and it is the function of the judiciary to say so.[2]

The second occasion when New Jersey showed the way to her sister States, was when she sent her delegates to the Annapolis Convention in 1786. This convention was called to secure uniform regulations of commerce in the Articles of Confederation, then the Constitution of the Union. New Jersey was not unmindful of the struggles she had had, in

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[1] Lodge's English Colonies in America, p. 278.

[2] The decision is referred to by Ch.-J. Kirkpatrick, in State *vs.* Parkhurst, IV. Halstead, p. 444.

the times of the Proprietors to secure from New York a commerce rightfully her own, but rising from that consideration, to her perhaps more important than to any other State, for she was like a cask flowing at both ends, tapped by New York and by Philadelphia, she suggested that the amendment should include, besides a power over commerce, "other important matters." The convention caught at the suggestion, and Hamilton, the herald of the better union, proclaimed it as the basis of the call to the Convention at Philadelphia, which gave us the Constitution of the United States.

In the times of the Proprietors we do not find in New Jersey many germs of an American Union, though in one or two cases the Assembly, "sensible of brotherly love to our neighbors," voted men and money for the war on the frontiers against the French. This spirit was with New Jersey of somewhat later growth; it came in royal times, but in the war for Independence, New Jersey ranked with Connecticut next to the first in the number of men she furnished, and other evidences were not wanting of a zeal for the good of the whole Union. But in the formation of the "more perfect union," she represented rather the principle of localism; the home rule of those early days had grown into the idea of the indestructibility of the State. This idea she brought into the Federal convention and around the banner of the "Jersey Plan," Livingston, Paterson and Brearly fought for it. When the existence of the principle was assured by the grant of equality of State representation in the Senate, how gladly did these, her champions, leap forward to give to a nationalism based upon localism, ample powers for the greatest work that ever fell to the lot of one people.

The Legislature of New Jersey had been the first in America to apply to the Union, the phrase of Montesquieu—"a Federal Republic." Unanimously her people ratified the Constitution of the United States, in which it was made real.

The States of Greece, which one may call the creative States, those which made her the leader of the civilization of